

DEPARTMENT OF BENEFIT PAYMENTS

744 P Street
Sacramento, CA 95814



October 23, 1974

ALL-COUNTY LETTER NO. 74-208

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: HYPOLITE V. CARLESON

REFERENCE: EAS 41-450.12

This is in response to many questions which have been raised following issuance of All County Welfare Director's letter No. 74-19 concerning the Hypolite v. Carleson decision by the Superior Court of Alameda. These questions relate to two major areas of concern and will be addressed in the following order: (1) the effect this case will have on the interpretation of continued absence for deprivation purposes as defined by EAS 41-450.12 and (2) the applicability of property regulations which treat availability of the property of absent parents.

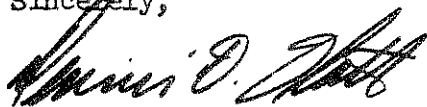
1. The Hypolite v. Carleson decision effectively invalidates EAS 41-450.12. This means continued absence exists as a basis of deprivation even when both parents are maintaining a home together but the child lives elsewhere. This absence may be the result of placement by the parents, by an agency on behalf of the parents (e.g., adoption agency or other social service agency) or by another authoritative agency such as a probation department.
2. EAS 42-213.13 and .26 are applicable in cases where the child is living apart from the parents, whether both parents are living together or not. Property and/or income of parents living together is considered in the same way as that of any other absent parent in determining eligibility of their child. In other words, the income and resources of the absent (natural or adoptive) parents would be used to determine AFDC eligibility only when it is available to the child. Availability of the parent's income and resources must be determined as part of the eligibility and grant determination process.

Such absent parents are legally responsible for support of their child, and the county is required to proceed against parents living together in the same manner as against absent parents who are living separately to obtain child support contributions.

OBsolete

Note, however, in foster care cases the income and resources of the parents with whom the child was living as well as the deprivation basis for the child prior to the court action removing the child from the parents' home is considered in determining whether there is eligibility for federal participation in the foster payments (EAS 44-323.41).

Sincerely,



DENNIS O. PLATT
Deputy Director

cc: CWDA

31-100-10000